1942 **File No.** O-Local-Fund Audit/42

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Legal DEPARTMENT

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Subject:— Opinions under the Bombay Local Fund Audit Act, 1930.

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Office of the R.L.A.

It appears that one Sayyad Nur Sayyadlal, a taluka peon under the District School Board, East Khandesh was entrusted with a sum of Rs.2,500/- and some books on 8-2-1930 for disbursement to the school teachers in the Amalner Taluka. He disbursed Rs.1,869-2-3 and misappropriated the balance for which he was prosecuted and convicted. The school Board handed over the papers to Mr. Sawant, a pleader on 27-2-1931 for filing a suit against the peon for the recovery of the misappropriated amount. Without taking steps to file a suit immediately, Mr. Sawant kept the Papers with him till 19-5-1932 on which date the papers were recalled by the Administrative Officer. The papers remained with the Administrative Officer from 19-5-1932 to 20-5-1933 during which period the claim against the peon became time barred. The papers were returned to Mr. Sawant on 20-5-1933 and a suit was filed by him on 1-12-1933; but it was dismissed on the ground of limitation. It appears that the authorities hold that the loss of Rs. 630-13-9 plus Rs. 10-8-0 for books i.e.in all a loss of Rs. 641-5-9 was caused to the local authority by the gross negligence of Mr. Sawant in failing to take steps to file a suit against the peon in time. The question for the consideration of the R.L.A. is whether the loss can be charged against Mr. Sawant under section 11(1) of the Bombay Local Fund Audit Act, 1930.

2. Section 11(1) of the Bombay Local Fund Audit Act, 1930 inter alia provides that the Commissioner may disallow any item which appears to him to be contrary to law and surcharge the same on the person making or authorising the making of, the illegal payment; and may charge against <u>any person</u> responsible therefor <u>the amount of any deficiency or loss</u> caused by the gross negligence or misconduct of that person or any sum received which ought to have been but is not brought into account by that person and shall in every such case certify the amount due from such person . These provisions are analogous to rule 21 of the Rules contained in Part III of Schedule V to the Madras Act IV of 1919 (see page 229 of Aiyangar's Law of Municipal Corporation ~~in British India~~).

in British India).

/Discussing the provisions of rule 21 Mr. Aiyangar observes at pages 231,232 thus:-"Rule 21 /provides for two things. The first part deals with illegal payments i.e. such as are ultra vires or not permitted by statute. They are to be surcharged on the person ~~making~~ making or authorising the making of the payment. It is clear that the persons answering to either of these descriptions must necessarily be persons who either have had money of the corporation for which they must properly account, or have had the control of the funds of the corporation which they have had authority to pay, and for the proper expenditure of which they have therefore to account. There is therefore no difficulty in construing the language of this part of the rule. The auditor must surcharge ~~the illegal~~ the illegal payment on the person offending either by disallowing it from the credits claimed by him or by increasing the debits admitted by him. The second part of the rule relates to " the amount of any deficiency or loss incurred by the negligence or misconduct of a person responsible therefor". It will be seen that the language here is changed. The power and duty to charge the deficiency or loss is limited to the case of a person responsible therefor . The meaning of the language is clear". Similar observations were made by the Hon'ble Dewan Bahadur Harilal Desai while introducing the Bill No. IX of 1930 which was ultimately passed into the Bombay Local Fund Audit Act, 1930. He observed: "The object of Government is to see that the public money is utilised strictly for the purposes for which it has been granted and that those persons whose negligence results in a loss to the public or whose dishonesty diverts those funds into their own pockets shall be brought to book. We propose to secure this object by requiring the President or Chairman of the local authority to publish the audit notes with their replies within three months and by empowering the Commissioner to dis-allow ~~item~~

items of expenditure which appear to him to have been undertaken contrary to law and surcharge the same on the person making or authorising it. In addition it is proposed to empower the Commissioners to charge against any person responsible thereon-for- therefor the amount of any deficiency or loss caused by his negligence or misconduct" (see p. 1652 of the Bombay Legislative Council Debates, ~~Vol.~~ Vol. XXVIII, 1930). The words "any person" used in the later part of section 11(1) are very wide and will include persons other than the municipal councillors, municipal officers and servants. It appears it would be against the plain language of the second part of section 11(1) to limit its application to only members or office bearers or officers of the local authority concerned. The contrary view taken by the Commissioner, Central Division in paragraph 6 at page 3 ante does not appear to be correct. It would therefore appear competent to the Commissioner to take action under section 11(1) with a w view to charging against Mr. Sawant the loss caused to the Board by his gross negligence or misconduct.

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Remembrancer of Legal Affairs.

U.R.To E.D., No. 2710 dated the 26th March 1942.

Office of the R.L.A.

The words " if he is of opinion" in the proviso to sub-section (3) of section 10 of the Bombay Local Fund Audit Act, 1930. give wide discretion to the Director of Public Instruction and it would be competent for him to condone the delay in presenting the bills of travelling allowance by Messrs. B. D. Kadambande and T.J. Walimbe and to refrain from recovering these amounts from them. There is no limitation prescribed for making any order of surcharge or charge under section 11. But a claim for recovery through the process of a civil court is clearly barred under Article 96 of the Limitation Act, the mistake in making the payment being discovered more than three years ago; a suit for recovery is not also likely to succeed, the payment being made when it was already time-barred (see 55 All. p. 912 at p. 951). The view taken by E. D. at pp. 5-7 ante on both points is correct.

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Remembrancer of Legal Affairs.

U.R. to E.D., No. 3324, dated the 17th April 1942.

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